IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 13385 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

CHANDRAKANTBHAI R.GANDHI

Versus

OM PRAKASH B. BHARADWAJ

Appearance:

1. Special Civil Application No. 13385 of 2004

MR AMAR N BHATT for Petitioner No. 1-3

MR KG PANDIT for Respondent No. 1

MR RAHUL K PANDYA for Respondent No. 2

..... for Respondent No. 3

DS AFF.NOT FILED (N) for Respondent No. 3/1-3/7

CORAM : HON'BLE MR.JUSTICE A.L.DAVE

Date of decision: 13/12/2004

ORAL JUDGEMENT

1. Leave to amend and delete respondent no.3.

2. Rule. Learned Advocate Mr.K.G.Pandit waives service of notice of rule on behalf of respondent no.1 and Mr.Pariml B. Patel appearing for learned Advocate Mr.R.K.Pandya waives service of notice of rule on behalf of respondent no.2.

3. Heard learned Advocate Mr.A.N.Bhatt, learned Advocate Mr.K.G.Pandit and Mr.Parimal B. Patel appearing for learned Advocate Mr.R.K.Pandya for the parties.

4. The petitioners herein challenge the order passed by the learned Judge of Court No.14, City Civil Court on 20th August,2004 below Exh.41 in Darkhast (Execution) No.505 of 1998 under Order 21 Rule 32 issuing warrant against the petitioners.

4.1 The bone of contention on behalf of the petitioners is that the impugned order was passed in violation of principles of natural justice. It is indicated that learned Advocate Mr.Shukla had filed his appearance before the Court on 29th March,2000 vide Exh.31. Application Exh.41 was submitted to the Court on 3rd January,2003 and was decided on 20th Agusut,2004. A copy of the said Application was neither served on the petitioners or their Advocate on record and, therefore, they had no opportunity to oppose the said Application and canvass their own case.

5. Having regard to contentions, it has to be noted that it is successfully demonstrated by the petitioners that name of the learned Advocate for the petitioners did not appear on the Board, not only on the date of the order but, two adjournments prior thereto. It is also demonstrated that a copy of application Exh.41 was not served on the petitioners or their Advocates. The order by the Court below also makes it clear that they were not heard. In these set of circumstances, learned Advocate Mr.Shukla's submission that all that the petitioners are praying for is a hearing, appears to be justified and as a matter of fact, quite innocuous. The order passed against a party issuing warrant and sending a person to civil prison cannot be permitted to stand, if it is passed without affording an audience. Under the circumstances, order below Exh.41 passed on 20th Aguust,2004 by the learned Judge of Court No.14, City Civil Court is hereby set aside and the Court is directed to decide the said Application Exh.41 afresh after affording audience to all concerned. Rule is made absolute accordingly. Ad-interim relief granted earlier

stands vacated.

5.1 Looking to the peculiar circumstances of the case, learned Advocate Mr.Pandit prays for a outer limit to be fixed by this Court for deciding the said Application Exh.41 and prays that it may be ordered to be decided within 3 months. On the other hand, learned Advocate Mr.Shukla prays for 2 months time.

6. Having regard to the request, in the opinion of this Court, it would be reasonable to expect from the Executing Court to hear and decide Application Exh.41 in Darkhast (Execution) No.505 of 1998 on a priority basis and decide the same preferably before end of April,2005. The parties shall extend cooperation.

(A.L.Dave,J.)

(vipul)